**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL APPEAL No. 115 of 1996**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE KS JHAVERI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**STATE OF GUJARAT - Appellant(s)**
**Versus**
**RAJESH MAGANLAL - Opponent(s)**

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**Appearance :**
Mr.S.P.Hasurkar, APP for Appellant(s) : 1,
MR HARESH N JOSHI for Opponent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE KS JHAVERI**

**Date : 01/10/2007**

**ORAL JUDGMENT**

1. The appellant – State has filed this appeal challenging the judgment and order passed by learned Judicial Magistrate, First Class, Dwarka in Criminal

Case No.115 of 1996 dated 21.1.1995 whereby the respondent was acquitted of the offence alleged under Sections 7 and 16 of Prevention of Food Adulteration Act against him.

2. The prosecution case, in brief, was that a sample of lemon syrup was taken from the place of manufacture of the accused on 30th June, 1986 and the same was sent for analysis and as per the analysis report, lemon syrup was not as per the provisions of Prevention of Food Adulteration Act and the Rules made thereunder Accordingly a complaint came to be filed. After recording necessary evidence, learned Magistrate acquitted the respondent of the offences for which he was charged. It is against the aforesaid judgment and order, the present appeal has been filed.

3. Mr. S.P. Hasurkar, learned APP, appearing for the appellant submitted that the trial court has committed an error in acquitting the accused on the ground that the sample was taken from the residence but in the notice it was stated that it was taken from the shop. Apart from that, there are contradictions in the findings of the trial Court that whether it is lemon syrup or carbonated water and in that view of the matter the trial Court has committed serious error in acquitting the accused. It is therefore requested to allow the present appeal.

4. Learned Advocate for the respondent

submitted that the deposition of the complainant before the trial Court itself is contradictory. It is further submitted that there is no violation of the provisions of the Act and the Rules and the trial court has not committed any error in passing the judgment and order in question.

5. The scope and power of the appellate court to interfere in appeal against acquittal is now well settled. In the case of State of Goa Vs. Sanjay Thakran, reported in (2007)3 SCC 755, the Apex Court held that the appellate court can review the evidence and interfere with the order of acquittal only if the approach of lower court is vitiated by some manifest illegality or the decision is perverse and the court has committed a manifest error of law and ignored the material evidence on record. Para 16 of the said decision reads as under:

> “16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the court of appeal would not take the view which would upset the judgment delivered by the Court below. However,the appellate court has a power to review the evidence if it is of the view that the view arrived at by the court below is perverse and the court has committed a manifest error

> of law and ignored the material evidence on record. A duty is cast upon the appellate court, in such circumstances, to reappreciate the evidence to arrive at a just decision on the basis of material placed on record to find out whether any of the accused is connected with commission of the crime he is charged with.

6.1. I have heard learned Advocates for the respective parties. As a result of hearing and perusal of the record it is found from the record that the trial court has come to the conclusion after appreciating the entire evidence on record. It can be further seen from the record that the trial Court has come to the conclusion that whether it is lemon syrup or carbonated water is not proved and the place of offence – whether it is residence or shop is also not proved. In fact the prosecution has failed to prove the case against the respondent.

6.2. There is nothing on record to show that the approach of the trial court is vitiated by some manifest illegality or the decision is perverse and the court has committed a manifest error of law and ignored the material evidence on record. I am in complete agreement with the reasonings adopted and findings arrived at by the Trial court. However, I am not discussing the evidence of each witness in detail in view of the observations made by the Apex Court in the case of State of Karnataka Vs. Hemareddy, reported in AIR 1981 SC 1417 wherein it is held as under:

> “... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice.”

7. In the result, the appeal is required to be dismissed and is accordingly dismissed.

[K.S. JHAVERI, J.]

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